



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2018-0042; FRL-10007-90-Region 3]

Air Plan Disapproval; Maryland; Interstate Transport Requirements for the 2010 1-Hour Sulfur Dioxide National Ambient Air Quality Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to disapprove part of a Maryland state implementation plan (SIP) submission as inadequate to meet certain Clean Air Act (CAA) interstate transport requirements for the 2010 primary sulfur dioxide National Ambient Air Quality Standard (SO₂ NAAQS). Specifically, EPA proposes to find that the Maryland SIP submission does not contain adequate provisions prohibiting emissions from Maryland sources which will contribute significantly to nonattainment or interfere with maintenance of the 2010 SO₂ NAAQS in any other state.

DATES: Written comments must be received on or before **[insert date 30 days after date of publication in the Federal Register]**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R03-OAR-2018-0042 at <https://www.regulations.gov>, or via email to spielberger.susan@epa.gov. For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. For either manner of

submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **For Further Information Contact** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Megan Goold, Planning & Implementation Branch (3AD30), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814-2027. Ms. Goold can also be reached via electronic mail at goold.megan@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On June 22, 2010 (75 FR 35520), EPA promulgated a revised primary NAAQS for SO₂ at a level of 75 parts per billion (ppb), based on a 3-year average of the annual 99th percentile of 1-hour daily maximum concentrations. Pursuant to section 110(a)(1), states must submit “within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof),” a plan that provides for

the “implementation, maintenance, and enforcement” of such NAAQS. This SIP submission is generally referred to as an “infrastructure SIP.” The statute directly imposes on states the duty to make these SIP submissions, and the requirement to make the submissions is not conditioned upon EPA’s taking any action other than promulgating a new or revised NAAQS. Section 110(a)(2) includes a list of specific elements that “[e]ach such plan” submission must address to meet the infrastructure requirements. Among the section 110(a)(2) requirements are the requirements under section 110(a)(2)(D)(i)(I) for states to include adequate provisions in their SIPs that prohibit emissions within the state which will contribute significantly to nonattainment in, or interfere with maintenance by, any other state with respect to a NAAQS. This infrastructure element related to interstate transport of SO₂ is the subject of this proposed rulemaking action.

II. Relevant Factors to Evaluate 2010 SO₂ Interstate Transport SIPs

Although SO₂ is emitted from a similar universe of point and nonpoint sources, interstate transport of SO₂ is unlike the transport of fine particulate matter (PM_{2.5}) or ozone, in that SO₂ is not a regional pollutant and does not commonly contribute to widespread nonattainment over a large (and often multi-state) area. The transport of SO₂ is more analogous to the transport of lead (Pb) because its physical properties result in localized pollutant impacts very near the emissions source. However, ambient concentrations of SO₂ do not decrease as quickly with distance from the source as Pb because of the physical properties and typical release heights of SO₂. Emissions of SO₂ travel farther and have wider ranging impacts than emissions of Pb but do not travel far enough to be treated in a manner similar to ozone or PM_{2.5}. The approaches that the EPA has adopted for ozone or PM_{2.5} transport are too regionally focused and the approach for Pb transport is too tightly circumscribed to the source to serve as a model for SO₂ transport. SO₂ transport is

therefore a unique case and requires a different approach.

In this proposed rulemaking, as in prior SO₂ transport analyses, EPA focuses on a 50 kilometer-wide zone around large stationary sources of SO₂ because the physical properties of SO₂ result in relatively localized pollutant impacts near an emissions source that diminish with distance.

Given the physical properties of SO₂, EPA selected the “urban scale” – a spatial scale with dimensions from 4 to 50 kilometers (km) from point sources – given the usefulness of that range in assessing trends in both area-wide air quality and the effectiveness of large-scale pollution control strategies at such point sources.¹ As such, EPA utilized an assessment up to 50 km from point sources in order to assess trends in area-wide air quality that might impact downwind states.

III. Summary of State SIP Revision

On August 17, 2016, Maryland, through the Maryland Department of the Environment (MDE), submitted a SIP revision, consistent with EPA guidance, to satisfy most of the infrastructure requirements of CAA section 110(a)(2) for the 2010 SO₂ NAAQS.²

On May 8, 2019 (84 FR 20070), EPA proposed approval of Maryland’s infrastructure SIP submittal for the 2010 1-hour SO₂ NAAQS for all of the submitted applicable elements of section 110(a)(2) with the exception of 110(a)(2)(D)(i)(I), which are the interstate transport

¹ For the definition of spatial scales for SO₂, see 40 CFR part 58, appendix D, section 4.4 (“Sulfur Dioxide (SO₂) Design Criteria”). For further discussion on how EPA is applying these definitions with respect to interstate transport of SO₂, see EPA’s proposal on Connecticut’s SO₂ transport SIP. 82 FR 21351, 21352, 21354 (May 8, 2017).

² Consistent with “Guidance on Infrastructure SIP Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2),” Memorandum from Stephen D. Page, September 13, 2013. The Maryland SIP submission addressed all of the infrastructure requirements of section 110(a)(2) except for requirements concerning nonattainment new source review permit programs under 110(a)(2)(C) and the nonattainment planning requirements under part D, title I of the CAA found at 110(a)(2)(I). These elements are not subject to the same three-year deadline for adoption as the other 110(a)(2) requirements.

elements. In that action, EPA stated that it would act on the interstate transport elements in a future action. This proposed rulemaking action addresses those interstate transport elements. In Maryland's August 17, 2016 SIP submittal, MDE discusses various State and Federal measures which it asserts prohibit Maryland sources from emitting SO₂ at levels which would contribute significantly to nonattainment or interfere with maintenance of the SO₂ NAAQS in another state, including: (1) The Healthy Air Act (HAA), which was enacted in 2006, as well as its implementing regulations at Code of Maryland Regulations (COMAR) 26.11.27 (adopted into the SIP in 2017 (73 FR 51599)), which require reductions in total emissions of SO₂ from electric generating units (EGUs); (2) a July 11, 2013 consent decree between Holcim, Incorporated and the U.S. government which requires Holcim to replace units at its Hagerstown, Maryland facility and install controls with significant SO₂ reductions; and (3) the State's Regional Haze SIP, approved by EPA on July 6, 2012 (77 FR 39938), which reduces SO₂ from Maryland sources subject to Best Available Retrofit Technology (BART) requirements.

Maryland also considered four existing SO₂ nonattainment areas in Pennsylvania, West Virginia, and Ohio, as well as one area in Ohio that was not yet characterized at the time of Maryland's August 17, 2016 submittal but that Maryland considered a potential nonattainment area.

Maryland determined that the distance from Maryland state borders to the existing nonattainment areas or to the potential nonattainment area was beyond the range of concern for transported SO₂ emissions.³ Likewise, Maryland considered a potential nonattainment area in the State that had not yet been characterized and determined that the distance (39 miles or approximately 63 km)

³ The distance from Maryland's nearest border to the Allegheny County, Pennsylvania SO₂ nonattainment area is 49 miles (approximately 79 km), to the Indiana, Pennsylvania SO₂ nonattainment area is 59 miles (approximately 95 km), to the Marshall, West Virginia SO₂ nonattainment area is 69 miles (approximately 111 km) and to the Weirton-Steubenville, Ohio-West Virginia SO₂ nonattainment area is 78 miles (approximately 126 km). The distance from Maryland's state border to Ohio's potential nonattainment area is 142 miles (approximately 229 km).

from the large SO₂ sources in that uncharacterized area to a neighboring state was also beyond the range of concern for SO₂ transport.

IV. EPA's Analysis of Maryland's Submittal

The EPA generally agrees that the Federally enforceable measures described in Maryland's August 17, 2016 SIP submittal have contributed to reductions of SO₂ emissions at specific sources throughout the State. However, the submittal does not address SO₂ emissions from the Luke Paper Mill (Luke) that current ambient monitoring data demonstrate as contributing significantly to nonattainment of the 2010 SO₂ NAAQS in West Virginia.

On August 21, 2015 (80 FR 51052), EPA promulgated air quality characterization requirements for the 2010 1-hour SO₂ NAAQS in the Data Requirements Rule (DRR). The DRR requires state and local air agencies to characterize air quality, through air dispersion modeling or monitoring, in areas associated with sources that emitted 2,000 tons per year (tpy) or more of SO₂, or that have otherwise been listed under the DRR by EPA or state air agencies. EPA expected that the information generated by implementation of the DRR would help inform designations for the 2010 1-hour SO₂ NAAQS, including designations of the remaining undesignated areas that must be completed by December 31, 2020 ("round 4"), as well as for other CAA programs. New source-oriented monitors were required to be operational by January 1, 2017.

Luke, in Allegany County, Maryland, is a source of SO₂ emissions located on the West Virginia state border. Luke emitted greater than 2,000 tons of SO₂ in 2014 and was therefore required to be characterized pursuant to the DRR. Maryland elected to install new source-oriented monitors

to capture the maximum impacts from Luke.⁴ Two monitors were installed in Allegany County, Maryland, and one monitor was installed in Mineral County, West Virginia. These three monitors were installed in accordance with EPA’s Source-Oriented Monitoring Technical Assistance Document⁵ as described in Maryland’s Annual Monitoring Network Plan (AMNP) for Calendar Year 2017 and the accompanying Addendum, which were both approved by EPA on November 10, 2016.⁶

The three source-oriented monitors around the Luke facility began operating after this SIP was submitted in 2016. The two Maryland monitors began operating on January 11, 2017 and the West Virginia monitor began operating on February 24, 2017.

Table 1 shows the certified 99th percentile of daily maximum 1-hour concentrations at the three new monitors for 2017 and 2018, as well as the preliminary 99th percentile concentration for 2019.⁷ The 2019 data is preliminary because it has not yet been quality assured and certified. Maryland is required to certify the 2019 data for all three monitors by May 1, 2020.

Table 1. Monitored SO₂ concentrations, in ppb, around Luke⁸

County, State	Monitor ID	2017 99th percentile	2018 99th percentile	Preliminary 2019 99th percentile	Preliminary 2017-19 average (design value)
Mineral, WV	54-057-8883	186.8	203.3	134.9	175

⁴ Maryland’s 2016 Annual Monitoring Network Plan details the modeling used to site the three new monitors around the Luke Paper facility. Through that plan, EPA approved the new monitor locations.

⁵ See EPA’s SO₂ NAAQS Designations Source-Oriented Monitoring Technical Assistance Document (TAD), February 2016, at <https://www3.epa.gov/airquality/so2implementation/SO2MonitoringTAD.pdf>

⁶ As required by 40 CFR 58.10, Maryland submits an AMNP annually to EPA that details any modifications to the monitoring network. The AMNPs for calendar years 2017-2019 are provided in the docket for this rulemaking. EPA’s approval of each AMNP is included in the subsequent year’s AMNP in the docket.

⁷ To certify monitoring data, state or local air agencies upload their data to the EPA Air Quality System (AQS) for the year, review their data, correct it as needed, and “certify” their data in the system.

⁸ Data source: EPA AQS, <https://www.epa.gov/aqs>

Allegany, MD	24-001-8881	88.8	105.7	71.7	89
Allegany, MD	24-001-8882	152.3	172.5	144	156

A monitoring site in an area is determined to be meeting the 2010 primary 1-hour SO₂ NAAQS when the 99th percentile of the daily maximum 1-hour average concentrations, averaged over three years, does not exceed 75 ppb (40 CFR 50.17(b)). Two years of certified data shows the 2017 and 2018 99th percentile concentrations at the Mineral County, West Virginia monitor as 186.8 ppb and 203.3 ppb, respectively. The preliminary 2019 99th percentile 1-hour maximum concentration and the projected design value using the preliminary 2019 99th percentile 1-hour maximum concentration are also shown in the table. The preliminary 2017–2019 design value at the Mineral County, West Virginia monitor is 175 ppb, using certified 2017-2018 data and preliminary 2019 data. This monitor would not show levels meeting the standard regardless of the certified 99th percentile value for 2019 because even if the 99th percentile value for 2019 was zero, the 3-year design value would still violate the NAAQS $((186.8 \text{ ppb} + 203.3 \text{ ppb} + 0 \text{ ppb})/3 = 130.03 \text{ ppb})$. This means it is mathematically impossible for this monitor to show attainment with the 2010 SO₂ NAAQS.

Luke is the only source⁹ that emits greater than 100 tpy of SO₂ in the area near the Mineral County, West Virginia monitor.¹⁰ Based on the information contained in this notice, EPA

⁹ While there are other SO₂ emissions sources near the primary Luke facility and its associated source-oriented monitors, these smaller sources are either also owned by Luke, have low SO₂ emissions compared to the primary Luke facility, or are located a far enough distance away that they are likely not significant contributors to the violating monitors given the nature of SO₂ dispersion described in section II.

¹⁰ There is a SO₂ source about 35 km away in neighboring Grant County, West Virginia, that was required to be characterized pursuant the DRR. In Round 3 of SO₂ designations, EPA designated the area around Dominion Resources, Mt. Storm Power Station as Attainment/Unclassifiable based on modeling performed by the State of West Virginia. This modeling projected the peak impacts from the Mt. Storm plant to be south of the facility, away from the area around the Luke facility. See “Technical Support Document: Chapter 43 Intended Round 3 Area Designations for the 2010 1-Hour SO₂ Primary National Ambient Air Quality Standard for West Virginia” at

proposes to conclude that Luke is impacting a violation of the NAAQS in the neighboring state of West Virginia. Therefore, EPA proposes that Luke significantly contributes to projected nonattainment in West Virginia. EPA is aware that Luke has ceased operations as of June 2019, however, as of the date of this action, Luke has not surrendered its permit(s) and there are no Federally enforceable measures in Maryland's SIP to prevent Luke from restarting operations and emitting SO₂ at levels that contribute significantly to nonattainment or interfere with the maintenance of the 2010 SO₂ NAAQS in West Virginia.

V. Proposed Action

EPA is proposing to determine that the portion of the August 17, 2016 Maryland SO₂ infrastructure SIP submittal addressing CAA section 110(a)(2)(D)(i)(I) (the interstate transport of pollution) is not approvable because it does not include measures addressing the SO₂ emissions from the Luke Paper Mill in Maryland that, based on the available information described herein, EPA believes will contribute significantly to the projected nonattainment in West Virginia or will interfere with maintenance of the 2010 SO₂ NAAQS.

VI. Statutory and Executive Order Reviews

Executive Orders 12866 and 13563: Regulatory Planning and Review

Under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011), this action is not a "significant regulatory action" and, therefore, is not subject to review by the Office of Management and Budget.

Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs

https://www.epa.gov/sites/production/files/2017-08/documents/43_wv_so2_rd3-final.pdf. See also "Technical Support Document: Chapter 43 Final Round 3 Area Designations for the 2010 1-Hour SO₂ Primary National Ambient Air Quality Standard for West Virginia" at <https://www.epa.gov/sites/production/files/2017-12/documents/43-wv-so2-rd3-final.pdf>

This action is not an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866.

Paperwork Reduction Act

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Regulatory Flexibility Act

This action merely proposes to disapprove state requirements as not meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Unfunded Mandates Reform Act

Because this rule proposes to disapprove pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

Executive Order 13132: Federalism

This action also does not have Federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely proposes to disapprove a state requirement and does not alter the relationship or the distribution of power and responsibilities established in the CAA.

Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

This rule also is not subject to Executive Order 13045 “Protection of Children from Environmental Health Risks and Safety Risks” (62 FR 19885, April 23, 1997), because it proposes to disapprove a state rule.

Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use.

Because it is not a “significant regulatory action” under Executive Order 12866 or a “significant energy action,” this action is also not subject to Executive Order 13211. (66 FR 28355, May 22, 2001).

National Technology Transfer Advancement Act

In reviewing state submissions, EPA’s role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the state to use voluntary consensus standards (VCS), EPA has no authority to disapprove a state submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a state submission, to use VCS in place of a state submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629 (February 16, 1994)) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA lacks the discretionary authority to address environmental justice in this action. In reviewing SIP submissions, EPA's role is to approve or disapprove state choices, based on the criteria of the CAA. Accordingly, this action merely disapproves certain state requirements for inclusion into the SIP under section 110 of the CAA and will not in-and-of itself create any new requirements. Accordingly, it does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Sulfur oxides.

Dated: April 13, 2020

Cosmo Servidio
Regional Administrator,
Region III.

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